

AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 16, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2273

Introduced by Assembly Member Wieckowski

February 24, 2012

An act to amend Section 1368 of, and to add Section 2924.1 to, the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 2273, as amended, Wieckowski. Common interest developments: required documents.

(1) The Davis-Stirling Common Interest Development Act requires an owner of a separate interest in a common interest development to provide specified documents to a prospective purchaser of that interest. Existing law requires a homeowners' association to provide these documents to the owner of the separate interest within 10 days of the mailing or delivery of the request, and limits the amount of fees charged for the provision of the documents to the association's actual costs to procure, prepare, and reproduce the requested documents.

This bill would additionally provide that an acquiring owner of a separate interest shall, ~~within 30 days of receiving title~~, provide to the association's board secretary, agent, manager, or designated representative, ~~a copy of the owner's deed or other document transferring title to the acquiring owner of the separate interest and a written notice of the acquiring owner's mailing address within 30 days of receiving title~~, except as specified.

(2) Existing law imposes various requirements that must be satisfied prior to exercising a power of sale under a mortgage or deed of trust.

This bill would, notwithstanding any other law, impose certain requirements on the sale of a property in a common interest development, as defined, executed under a power of sale contained in any deed of trust or mortgage. Among other things, the bill would require the sale to take place in the county where the property or a portion of the property is located, and would also require the sale to be recorded within 30 days, as specified. ~~The~~

~~This bill would also make the acquiring owner the purchaser, as specified, liable for the amount of certain unpaid liens recorded on the property if the sale is not recorded according to the provisions above as described above. The bill would specify that these provisions would only apply if the purchaser is also the person or entity that exercised the power of sale on the property.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368 of the Civil Code is amended to
2 read:

3 1368. (a) The owner of a separate interest, other than an owner
4 subject to the requirements of Section 11018.6 of the Business and
5 Professions Code, shall, as soon as practicable before transfer of
6 title to the separate interest or execution of a real property sales
7 contract therefor, as defined in Section 2985, provide the following
8 to the prospective purchaser:

9 (1) A copy of the governing documents of the common interest
10 development, including any operating rules, and including a copy
11 of the association's articles of incorporation, or, if not incorporated,
12 a statement in writing from an authorized representative of the
13 association that the association is not incorporated.

14 (2) If there is a restriction in the governing documents limiting
15 the occupancy, residency, or use of a separate interest on the basis
16 of age in a manner different from that provided in Section 51.3, a
17 statement that the restriction is only enforceable to the extent
18 permitted by Section 51.3 and a statement specifying the applicable
19 provisions of Section 51.3.

1 (3) A copy of the most recent documents distributed pursuant
2 to Section 1365.

3 (4) A true statement in writing obtained from an authorized
4 representative of the association as to the amount of the
5 association's current regular and special assessments and fees, any
6 assessments levied upon the owner's interest in the common
7 interest development that are unpaid on the date of the statement,
8 and any monetary fines or penalties levied upon the owner's
9 interest and unpaid on the date of the statement. The statement
10 obtained from an authorized representative shall also include true
11 information on late charges, interest, and costs of collection which,
12 as of the date of the statement, are or may be made a lien upon the
13 owner's interest in a common interest development pursuant to
14 Section 1367 or 1367.1.

15 (5) A copy or a summary of any notice previously sent to the
16 owner pursuant to subdivision (h) of Section 1363 that sets forth
17 any alleged violation of the governing documents that remains
18 unresolved at the time of the request. The notice shall not be
19 deemed a waiver of the association's right to enforce the governing
20 documents against the owner or the prospective purchaser of the
21 separate interest with respect to any violation. This paragraph shall
22 not be construed to require an association to inspect an owner's
23 separate interest.

24 (6) A copy of the initial list of defects provided to each member
25 of the association pursuant to Section 1375, unless the association
26 and the builder subsequently enter into a settlement agreement or
27 otherwise resolve the matter and the association complies with
28 Section 1375.1. Disclosure of the initial list of defects pursuant to
29 this paragraph does not waive any privilege attached to the
30 document. The initial list of defects shall also include a statement
31 that a final determination as to whether the list of defects is accurate
32 and complete has not been made.

33 (7) A copy of the latest information provided for in Section
34 1375.1.

35 (8) Any change in the association's current regular and special
36 assessments and fees which have been approved by the
37 association's board of directors, but have not become due and
38 payable as of the date disclosure is provided pursuant to this
39 subdivision.

1 (9) If there is a provision in the governing documents that
2 prohibits the rental or leasing of any of the separate interests in
3 the common interest development to a renter, lessee, or tenant, a
4 statement describing the prohibition and its applicability.

5 (10) If requested by the prospective purchaser, a copy of the
6 minutes of the meetings, excluding meetings held in executive
7 session, of the association's board of directors, conducted over the
8 previous 12 months, that were approved by the association's board
9 of directors.

10 (b) (1) Upon written request, the association shall, within 10
11 days of the mailing or delivery of the request, provide the owner
12 of a separate interest, or any other recipient authorized by the
13 owner, with a copy of the requested documents specified in
14 paragraphs (1) to (10), inclusive, of subdivision (a). Upon receipt
15 of a written request, the association shall provide, on the form
16 described in Section 1368.2, a written or electronic estimate of the
17 fees that will be assessed for providing the requested documents.
18 The documents required to be made available pursuant to this
19 section may be maintained in electronic form, and may be posted
20 on the association's Internet Web site. Requesting parties shall
21 have the option of receiving the documents by electronic
22 transmission if the association maintains the documents in
23 electronic form. The association may collect a reasonable fee based
24 upon the association's actual cost for the procurement, preparation,
25 reproduction, and delivery of the documents requested pursuant
26 to the provisions of this section.

27 (2) No additional fees may be charged by the association for
28 the electronic delivery of the documents requested.

29 (3) Fees for any documents required by this section shall be
30 distinguished from other fees, fines, or assessments billed as part
31 of the transfer or sales transaction. Delivery of the documents
32 required by this section shall not be withheld for any reason nor
33 subject to any condition except the payment of the fee allowed
34 pursuant to paragraph (1).

35 (4) An association may contract with any person or entity to
36 facilitate compliance with the requirements of this subdivision on
37 behalf of the association.

38 (5) The association shall also provide a recipient authorized by
39 the owner of a separate interest with a copy of the completed form

1 specified in Section 1368.2 at the time the required documents are
2 delivered.

3 (c) (1) Unless the association notifies the acquiring owner of
4 a separate interest that the association acknowledges a transfer of
5 title, the acquiring owner shall, ~~within 30 days of receiving title,~~
6 ~~provide both of the following~~ *written notice of the acquiring*
7 *owner's mailing address* to the association's board secretary, agent,
8 manager, or designated representative: *within 30 days of receiving*
9 *title.*

10 ~~(A) A copy of the owner's deed or other document transferring~~
11 ~~title to the acquiring owner of the separate interest.~~

12 ~~(B) Written notice of the acquiring owner's mailing address.~~

13 (2) This subdivision shall not apply to an owner, subdivider, or
14 agent subject to the requirements of Section 11018.6 of the
15 Business and Professions Code.

16 (d) (1) Except as provided in paragraph (2), neither an
17 association nor a community service organization or similar entity
18 may impose or collect any assessment, penalty, or fee in connection
19 with a transfer of title or any other interest except for the following:

20 (A) An amount not to exceed the association's actual costs to
21 change its records.

22 (B) An amount authorized by subdivision (b).

23 (2) The prohibition in paragraph (1) does not apply to a
24 community service organization or similar entity, or to a nonprofit
25 entity that provides services to a common interest development
26 under a declaration of trust, that is described in subparagraph (A)
27 or (B):

28 (A) The community service organization or similar entity
29 satisfies both of the following requirements:

30 (i) The community service organization or similar entity was
31 established prior to February 20, 2003.

32 (ii) The community service organization or similar entity exists
33 and operates, in whole or in part, to fund or perform environmental
34 mitigation or to restore or maintain wetlands or native habitat, as
35 required by the state or local government as an express written
36 condition of development.

37 (B) The community service organization or similar entity, or a
38 nonprofit entity that provides services to a common interest
39 development under a declaration of trust, satisfies all of the
40 following requirements:

1 (i) The organization or entity is not an organization or entity
2 described in subparagraph (A).

3 (ii) The organization or entity was established and received a
4 transfer fee prior to January 1, 2004.

5 (iii) On and after January 1, 2006, the organization or entity
6 offers a purchaser the following payment options for the fee or
7 charge it collects at time of transfer:

8 (I) Paying the fee or charge at the time of transfer.

9 (II) Paying the fee or charge pursuant to an installment payment
10 plan for a period of not less than seven years. If the purchaser
11 elects to pay the fee or charge in installment payments, the
12 organization or entity may also collect additional amounts that do
13 not exceed the actual costs for billing and financing on the amount
14 owed. If the purchaser sells the separate interest before the end of
15 the installment payment plan period, he or she shall pay the
16 remaining balance prior to transfer.

17 (3) For the purposes of this subdivision, a “community service
18 organization or similar entity” means a nonprofit entity, other than
19 an association, that is organized to provide services to residents
20 of the common interest development or to the public in addition
21 to the residents, to the extent community common areas or facilities
22 are available to the public. A “community service organization or
23 similar entity” does not include an entity that has been organized
24 solely to raise moneys and contribute to other nonprofit
25 organizations that are qualified as tax exempt under Section
26 501(c)(3) of the Internal Revenue Code and that provide housing
27 or housing assistance.

28 (e) Any person or entity who willfully violates this section is
29 liable to the purchaser of a separate interest that is subject to this
30 section for actual damages occasioned thereby and, in addition,
31 shall pay a civil penalty in an amount not to exceed five hundred
32 dollars (\$500). In an action to enforce this liability, the prevailing
33 party shall be awarded reasonable attorneys’ fees.

34 (f) Nothing in this section affects the validity of title to real
35 property transferred in violation of this section.

36 (g) In addition to the requirements of this section, an owner
37 transferring title to a separate interest shall comply with applicable
38 requirements of Sections 1133 and 1134.

1 (h) For the purposes of this section, a person who acts as a
2 community association manager is an agent, as defined in Section
3 2297, of the association.

4 SEC. 2. Section 2924.1 is added to the Civil Code, to read:

5 2924.1. (a) Notwithstanding any other law, a sale of property
6 in a common interest development, as defined by Section 1351,
7 executed under the power of sale contained in any deed of trust or
8 mortgage shall meet all of the following requirements:

9 (1) ~~Take~~*The sale shall take* place in the county where the
10 property or a portion of the property is located.

11 (2) The sale shall be made to the highest bidder at an auction
12 to be held Monday through Friday, between the hours of 9 a.m.
13 and 5 p.m.

14 (3) The sale shall be recorded within 30 days after the date of
15 sale in the office of the county recorder where the property or a
16 portion of the property is located.

17 ~~(b) In the event that the trustee of a deed of trust or mortgage~~
18 ~~fails to record a trustee's deed~~

19 *(b) (1) If the sale is not recorded pursuant to paragraph (3) of*
20 *subdivision (a), the acquiring owner purchaser shall be liable for*
21 *the amount of all liens recorded pursuant to Section 1367 or 1367.1*
22 *that remain unpaid on the foreclosed property.*

23 *(2) This subdivision shall only apply if the purchaser is also the*
24 *person or entity that exercised the power of sale on the property.*

25 (c) Any failure to comply with the provisions of this section
26 shall not affect the validity of a sale in favor of a bona fide
27 purchaser.